

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Reconciliation of Stranded Cost Recovery Charge for 2002

Order Approving Settlement Agreement

O R D E R    N O.    24,224

October 24, 2003

**APPEARANCES:** Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Office of Consumer Advocate by Michael W. Holmes, Esq. on behalf of residential ratepayers; and Donald M. Kreis, Esq. of the Staff of the New Hampshire Public Utilities Commission.

**I. BACKGROUND AND PROCEDURAL HISTORY**

On May 1, 2003, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a proposed reconciliation of the accounts associated with the Company's Stranded Cost Recovery Charge (SCRC) and Transition Service charge for calendar year 2002. The filing follows up on Order No. 24,125 (February 14, 2003), in which the Commission approved an initial SCRC reconciliation and directed PSNH to file annual SCRC reconciliations thereafter by May 1 of the following year.

As explained in Order No. 24,125, the SCRC is the mechanism by which PSNH recovers those restructuring-related stranded costs that were allowed under the Agreement to Settle PSNH Restructuring (Restructuring Agreement) approved by the Commission in 2000. See *PSNH Proposed Restructuring Settlement*,

85 NH PUC 154 (approving Restructuring Agreement); *on reh'g*, 85 NH PUC 536 and 85 NH PUC 645 (2000); *see also PSNH Proposed Restructuring Settlement*, 85 NH PUC 567 (2000) (resolving financing issues related to securitization of stranded costs); RSA 369-B (establishing legislative conditions for securitization financing). Pursuant to RSA 374-F:2, IV, stranded costs are costs that electric utilities "would reasonably expect to recover if the [former] regulatory structure with retail rates for the bundled provision of electric service continued and that will not be recovered as a result of restructured industry regulation that allows retail choice of electricity suppliers, unless a specific mechanism for such cost recovery is provided."

Transition Service is "electricity supply that is available to existing retail customers prior to each customer's first choice of a competitive electricity supplier and to others, as deemed appropriate by the commission." RSA 374-F:2, V. PSNH provides its Transition Service from its portfolio of non-divested generation assets, mandated purchases from independent power producers and, as necessary, wholesale market purchases. As described, infra, PSNH is entitled to recover certain deficiencies and must credit certain surpluses from Transition Service to its recoverable stranded costs. The

instant docket represents the applicable reconciliation for 2002.

The Commission entered an Order of Notice on May 23, 2003, scheduling a Pre-Hearing Conference for June 11, 2003 and establishing a deadline for intervention petitions. No petitions were submitted, although the Office of Consumer Advocate (OCA) entered an appearance on behalf of residential ratepayers. The Pre-Hearing Conference took place as scheduled before Chairman Getz, with the parties and Staff conducting a technical session immediately thereafter to discuss what procedural schedule to propose to the Commission. Upon the recommendation of Chairman Getz, the Commission approved the proposed procedural schedule as submitted by the Commission Staff by Order No. 24,185 (June 19, 2003).

Thereafter, the parties and Staff conducted discovery, technical sessions and settlement conferences as contemplated by the schedule. On July 10, 2003, PSNH submitted a motion for confidential treatment, the subject of which was the descriptive memorandum prepared in connection with the planned (but ultimately delayed) sale of PSNH's non-nuclear generation portfolio. There were no objections to the PSNH motion.

On August 15, 2003, PSNH filed a Stipulation and Settlement Agreement entered into among PSNH, the OCA and Staff.

The Settlement, if approved, would resolve all outstanding issues in the docket.

In light of the pending settlement, and at the request of the parties and Staff, the Commission rescheduled the merits hearing in the case to September 23, 2003. The hearing took place as scheduled.

## **II. POSITIONS OF THE PARTIES AND STAFF**

### **A. Public Service Company of New Hampshire**

In its initial filing, PSNH proposed to credit a deferred regulatory liability of approximately \$160 million to be credited against Part 3 stranded costs for calendar 2002.<sup>1</sup> According to PSNH, the \$160 million comprises two major components: approximately \$179 million in net proceeds associated with the sale of PSNH's interest in the Seabrook nuclear power plant, offset by \$19 million, which is the difference between the expenses and revenue associated with PSNH's Transition Service. In addition, as previously ordered by the Commission, PSNH transferred \$7.9 million related to a change in state tax law from stranded cost obligations to an account that will permit that sum to be recovered through

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<sup>1</sup> Part 3 stranded costs represents those stranded costs that were deemed recoverable by PSNH under the terms of the Restructuring Agreement but as to which PSNH undertook some risk of non-recovery at the time it entered into the Restructuring Agreement. Largely as a result of a favorable sale price for PSNH's share of the Seabrook nuclear power plant, PSNH now expects to have recovered all of its Part 3 stranded costs by some time in 2006.

delivery service charges, credited \$933,936 to Part 3 stranded costs related to the settlement of a dispute related to PSNH's share of the Wyman 4 generation facility in Maine as well as \$17,100 related to disallowed replacement power costs at the Vermont Yankee nuclear power plant. See Order No. 24,125 (Feb. 14, 2003).

AS PSNH points out in its filing, during 2002 the price of Transition Service was set pursuant to RSA 369-B:3, IV(b)(1)(B)(i) at 4.4 cents per kilowatt-hour.<sup>2</sup> PSNH's filing indicates that its actual cost of providing Transition Service during the period was 4.91 cents per kilowatt-hour. According to PSNH, its Transition Service costs include the fuel costs associated with its portfolio of generation assets as well as costs and revenues associated with wholesale energy transactions, including the market value of purchases PSNH is required to make from independent power producers (IPPs) in its service territory. Also included, according to PSNH, are the non-fuel costs of generation (which include operations and

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<sup>2</sup> This price remained in effect through January 31, 2003. Effective on February 1, 2003, residential customers and certain small commercial and industrial customers began paying 4.6 cents per kilowatt-hour for Transition Service as required by RSA 369-B:3, IV(b)(1)(B)(i). Large commercial and industrial customers began paying 4.67 cents per kilowatt-hour for Transition Service on that date. See Order No. 24,117 (Jan. 30, 2003); see also RSA 369-B:3, IV(b)(1)(B)(ii) (requiring Transition Service price for these customers to be fixed at PSNH's "actual, prudent, and reasonable costs of providing such power" as of Feb. 1, 2003). As of February 1, 2004, all PSNH Transition Service customers must pay a rate pegged to PSNH's actual, prudent and reasonable costs; the Commission has opened Docket No. DE 03-175 to make the requisite determination.

maintenance (O&M) expenses, depreciation, property taxes and payroll taxes) and a return on PSNH's net investment in its generation facilities.

PSNH pointed out in its filing that the \$178.8 in net proceeds from the 2002 sale of its Seabrook interest represented a preliminary figure, with additional and subsequent changes that will further affect the figure. According to PSNH, such additional charges and/or credits will flow through to PSNH's Part 3 stranded costs.

Finally, PSNH included in costs to be recovered as part of this reconciliation \$2.484 million, which PSNH contends were costs incurred in anticipation of the sale of its non-nuclear generation assets. PSNH characterizes these costs as "restructuring and generation related," and thus recoverable from PSNH customers through the stranded cost recovery charge. Sale of the non-nuclear generation assets was originally contemplated by the Restructuring Agreement, but has now been deferred until at least April 30, 2006. See RSA 369-B:3-a (noting that, after that date, PSNH may divest its generation assets "if the Commission finds that it is in the economic interest of retail customers of PSNH to do so, and provides for the cost recovery of such divestiture").

**B. Summary of Stipulation and Settlement Agreement**

The Stipulation and Settlement Agreement submitted by PSNH, OCA and Staff provides that approval of the PSNH filing is consistent with the public interest with certain relatively minor modifications.

Specifically, the Stipulation notes that the parties and Staff agreed that replacement power costs associated with two outages at Seabrook Station, which took place prior to the sale of PSNH's interest in the plant, were subject to at least partial disallowance for imprudence. The outages in question are designated as OPRR 58 and OPRR 59. OPRR 58 took place during the regular operation of Seabrook Station and required a power reduction to effect corrective action, according to the Stipulation. The Stipulation further states that OPRR 59 took place during the regularly scheduled 2002 refueling outage at Seabrook, extending its duration by approximately 24 hours.

The Stipulation provides that PSNH will not seek to recover replacement power costs associated with OPRR 58, reducing recoverable costs by \$74,217. With respect to OPRR 59, the signatories to the Stipulation agreed that PSNH will not seek recovery of half the replacement power costs associated with the 24-hour extension of the refueling outage, reducing recoverable costs by \$110,316.

The Stipulation provides that PSNH may recover the \$2.484 million in costs referenced in PSNH's filing with respect to costs incurred in anticipation of the subsequently deferred sale of generation assets. PSNH agreed that in the event of a future sale of some or all of its non-nuclear generation assets, it would undertake reasonable efforts to avoid the duplication of any of these costs. PSNH further agreed that the failure to undertake such reasonable efforts would result in the disallowance of such expenses for recovery.

Finally, the Stipulation contains provisions related to the four percent interest in the Vermont Yankee Nuclear Power Corporation (VYNPC), and corresponding four percent entitlement to the plant's output that PSNH owned at the beginning of 2002. As noted in the Stipulation, PSNH and VYNPC's other joint owners sold their interests in July of 2002 on terms that provide for PSNH to continue to purchase four percent of Vermont Yankee's output through 2012. The Stipulation references an ongoing dispute between VYNPC and General Electric related to leaking fuel assemblies that were replaced just prior to the sale of the plant. As part of the Stipulation, PSNH agreed that it would credit customers in a future stranded cost charge reconciliation with the proceeds of PSNH's share of any relief obtained by VYNPC from General Electric, either by settlement or otherwise.



PSNH further agreed to notify the Commission and the OCA when the General Electric dispute is resolved.

### **III. COMMISSION ANALYSIS**

PSNH made its filing on May 1, 2003 pursuant to Order No. 24,125, in which the Commission approved the previous reconciliation of PSNH's Transition Service costs and directed PSNH to file annual reconciliations thereafter by May 1 of the ensuing year. As noted in Order No. 24,125, the Restructuring Settlement divides PSNH's recoverable stranded costs into three parts - Part 1, consisting of amounts required to recover the costs associated with the Rate Reduction Bonds issued in connection with the securitization plan approved by the Legislature via RSA 369-B, Part 2, comprising nuclear decommissioning charges as well as costs associated with independent power producers in the PSNH service territory, and Part 3, consisting of all other recoverable stranded costs. Under the terms of the Restructuring Settlement, PSNH undertook some risk of not fully recovering the Part 3 stranded costs via the establishment of a Part 3 Recovery End Date and various provisions for the adjustment of that date in certain circumstances. The SCRC is the mechanism by which PSNH pays down these recoverable stranded costs with customer revenue.

Transition Service is "electricity supply that is available to existing retail customers prior to each customer's

first choice of a competitive electricity supplier and to others, as deemed appropriate by the commission." RSA 374-F:2, V. It will be available to PSNH's large commercial and industrial customers at least through February 1, 2005 and to all other customers at least through February 1, 2006. See RSA 369-B:3, IV(b)(1)(B).

Transition Service charges and the SCRC are linked under the Restructuring Settlement. Specifically, the Restructuring Settlement permits PSNH to recover as a Part 3 stranded cost, or offset against Part 3 stranded costs, any difference between expenses incurred in supplying Transition Service and the revenue received via Transition Service charges. See Restructuring Settlement at lines 669-670.

Thus, we review what is proposed here for its consistency with the terms of the Restructuring Agreement, and with the public interest generally. Consistent with Order No. 24,125, we evaluate the expenses PSNH incurred in connection with providing Transition Service for their prudence, which means we disallow any replacement power costs incurred as a result of generation outages that resulted from imprudence. See Restructuring Agreement at lines 1506 to 1509 (describing prudence standard).

The record reflects that Staff conducted a thorough analysis of all generation-related outages during the

reconciliation period. We therefore adopt Staff's recommendation, as transmitted via the Stipulation and Settlement agreement, that only the two outages referenced therein were the result of imprudence sufficient to trigger disallowances.

Somewhat more difficult to resolve is the question of whether PSNH should recover in connection with the present reconciliation the \$2.484 million in costs PSNH contends it incurred in connection with the subsequently deferred sale of its non-nuclear generation portfolio. As noted at hearing, the auction of the generation portfolio was first deferred by the Legislature as part of Chapter 29 of the New Hampshire Laws of 2001, which had an effective date of May 22, 2001. Exhibit 4 of the present record reveals that less than \$15,000 of the \$2.484 million was incurred after that date. Thus we find that if there was any failure by PSNH to stop incurring divestiture-related expenses after the Legislature acted in 2001, a subject on which the record is inconclusive, such failure was *de minimus*.

Exhibits 3 and 4 reveal that approximately half of the \$2.484 million was paid to Morgan Guarantee Trust, which provided consulting services to PSNH in connection with the sale. The record supports a finding that these payments were related to the sale preparations (as opposed, for example, to

providing advice to PSNH on whether to ask the Legislature to defer or prevent any divestitures). For these reasons, and in light of PSNH's commitment to undertake all reasonable efforts to avoid incurring these expenses in connection with any future sale preparations, we determine that this aspect of the Stipulation is consistent with the public interest.

Finally, we note the testimony of PSNH's witness at hearing that future adjustments in the Seabrook sale proceeds credited to stranded costs will be small, in the thousands of dollars. Thus it is reasonable for us to assume that the \$179 million in sale proceeds credited to stranded costs here is sufficiently close to the actual figure to permit us to rely on it in approving the Stipulation.

In summary, the 2002 Transition Service reconciliation period represents an appropriate termination of PSNH's history of Seabrook ownership, and suggests that PSNH is keeping faith with its Restructuring Agreement obligations by operating its non-nuclear generation portfolio, and managing its wholesale energy transactions, in a prudent manner.

#### **IV. MOTION FOR CONFIDENTIAL TREATMENT**

The remaining matter is PSNH's uncontested motion for confidential treatment of the offering memorandum prepared in connection with the subsequently deferred auction of its non-nuclear generation portfolio.

The New Hampshire Right-to-Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. See RSA 91-A:4, I. The statute contains an exception, invoked here, for "confidential, commercial or financial information." RSA 91-A:5, IV. In *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997), the New Hampshire Supreme Court provided a framework for analyzing requests to employ this exception to shield from public disclosure documents that would otherwise be deemed public records. There must be a determination of whether the information is confidential, commercial or financial information "and whether disclosure would constitute an invasion of privacy." *Id.* at 552 (emphasis in original, citations omitted). "An expansive construction of these terms must be avoided," lest the exemption "swallow the rule." *Id.* at 552-53 (citations omitted). "Furthermore, the asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, . . . since these categorical exemptions mean not that the information is *per se* exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure." *Id.* at 553 (citations omitted).

Our applicable rule is designed to facilitate the employment of this balancing test. We require a motion for

confidentiality to contain (1) the specific documents or portions thereof for which confidential treatment is sought, (2) reference to statutory or common law authority favoring confidentiality, (3) "[f]acts describing the benefits of non-disclosure to the public, including evidence of harm that would result from disclosure to be weighed against the benefits of disclosure to the public," and certain evidence. Puc 204.06(b). The evidence must go to the issue of whether the information "would likely create a competitive disadvantage for the petitioner." *Id.* at (c).

We find that PSNH has made the requisite showing and that the public's interest in disclosure is clearly outweighed by PSNH's interest in maintaining the confidentiality of the document. The auction memorandum contains detailed descriptions of PSNH generation assets that may still be offered for sale in the future; the terms of such sale would have a direct financial impact on PSNH's customers. Release of this document at an inappropriate time could have an adverse effect on future bids for the plant.

**Based upon the forgoing, it is hereby**

**ORDERED**, that the Stipulation and Settlement Agreement entered into among Public Service Company of New Hampshire, the Office of Consumer Advocate and the Commission Staff is APPROVED

along with the Transition Service and Stranded Cost Recovery Charge reconciliation set forth therein; and it is further

**ORDERED**, that the motion of Public Service Company of New Hampshire for confidential treatment is GRANTED, and it is further

**ORDERED**, that the determination as to confidential treatment of documents is subject to the ongoing authority of the Commission, on its own motion or on the motion of Staff or any member of the public to reconsider such determination in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of October, 2003.

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Thomas B. Getz  
Chairman

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Susan S. Geiger  
Commissioner

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Graham J. Morrison  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary